

[PROPOSED] HEARING PROCEDURES  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R7-2020-0024

ISSUED TO  
NCA MANAGEMENT CO, LLC  
SAN BERNARDINO COUNTY  
WDID No.  
7\_36CC403989

SCHEDULED FOR SEPTEMBER 3, 2020

PLEASE READ THESE HEARING PROCEDURES CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Overview**

Pursuant to Water Code section 13323, the Assistant Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region ("Regional Water Board") has issued an Administrative Civil Liability (ACL) Complaint to NCA Management Co, LLC (hereafter Discharger), alleging violations of waiver conditions of the State Water Resources Control Board's (State Water Board) *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*, Order No. WQ-2017-0023-DWQ (General Order), as amended by Order No. WQ-2019-0001-DWQ. Regional Water Board staff, represented by the Regional Water Board Staff Prosecution Team ("Prosecution Team") propose in the ACL Complaint that the Regional Water Board impose administrative civil liability on the Discharger in the amount of \$334,356.18 pursuant to Water Code section 13350.

A hearing on this matter is currently scheduled to be conducted before the Regional Water Board during its meeting on September 3, 2020. The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Water Board will hear evidence, determine facts, make conclusions of law and consider whether to issue an ACL Order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel or continued to the next scheduled meeting. A continuance of the hearing will not automatically extend any deadlines set forth herein.

The public hearing will commence at 9:00am or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

**Physical Meeting Location: TBD**

Due to the COVID-19 emergency and the Governor's Executive Orders to protect public health by limiting public gatherings and requiring social distancing, this hearing may be conducted as remote/virtual hearing via video and teleconference, in whole or in part. The Advisory Team will provide the Designated Parties and Interested Persons with further information as it becomes available.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Water Board's website at <http://www.waterboards.ca.gov/coloradoriver/>. Please check the Board's website for the most up-to-date public hearing date and location as they are subject to change.

### **Hearing Procedures**

The hearing will be a formal adjudicative proceeding and will be conducted in accordance with these Hearing Procedures. The procedures governing adjudicatory hearings before the Regional Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at <http://www.waterboards.ca.gov>. Copies will be provided upon request.

In accordance with section 648(d), any procedure not provided by these Hearing Procedures are deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

Objections to these Proposed Hearing Procedures must be in writing and must be received by the Advisory Team no later than the deadline listed under "Important Deadlines" below, or they will be waived. Objections about the matters contained in these Proposed Hearing Procedures will not be entertained at the hearing. If the Advisory Team receives no objections to the Proposed Hearing Procedures by the deadline, the Advisory Team will confirm that the procedures will be the Final Hearing Procedures that will govern this adjudicative proceeding. The procedures and deadlines herein may be further amended by the Regional Water Board Chair or by the Advisory Team.

Failure to comply with the deadline and requirements contained herein may result in the exclusion of documents and/or testimony. The Discharger shall attempt to resolve objections to these Hearing Procedures with the Prosecution Team BEFORE submitting objections to the Advisory Team.

### **Separation of Prosecutorial and Advisory Functions**

The Regional Water Board separates prosecutorial and adjudicative functions in matters that are prosecutorial in nature. To ensure the fairness and impartiality of this proceeding, those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (the "Prosecution Team") are separate from those who will provide legal and technical advice to the Regional Water Board (the "Advisory Team"). Members of the Advisory Team are: Paula Rasmussen, Executive Officer; and Katharine Buddingh, Attorney III. Some members of the Prosecution Team are staff in the Lahontan Regional Water Quality Control

Board's (Lahontan Water Board) Eastern California Regional Cannabis Unit. This unit is responsible for determining compliance with and enforcing the requirements of the Cannabis General Order, including the Conditional Waiver requirements, within the Colorado River Regional Water Quality Control Board's jurisdiction. Members of the Prosecution Team are: Cassandra Owens, Assistant Executive Officer; Eric Taxer, Senior Water Resource Control Engineer; Carly Nilson, Environmental Scientist; Timothy Middlemis-Clark, Water Resource Control Engineer; and Patrick Lewis, Attorney I.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Further, members of the Advisory Team have not exercised any authority over the Prosecution Team, or advised them with respect to this matter, or vice versa. Assistant Executive Officer Cassandra Owens regularly advises the Regional Water Board in other, unrelated matters, but is not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any substantive ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

### **Hearing Participants**

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons."

Designated Parties are those subject to the ACL Complaint and other persons or organizations anticipated to have a substantial interest in the outcome of the hearing. Designated Parties may present written evidence, summarize their evidence orally at the hearing and cross-examine other parties' witnesses (if they are called). "Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of any alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceedings. Designated Parties are subject to cross-examination about any evidence they present.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Regional Water Board Prosecution Team
2. NCA Management Co, LLC

Interested Persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a Designated Party. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, and monitoring data), but may present written and/or oral non-evidentiary comments and policy statements. Interested Persons may not cross-examine witnesses and are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Water Board, Advisory Team, or others, at the discretion of the Regional Water Board.

**Requesting Designated Party Status**

Persons or organizations who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under “Important Deadlines” below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses, etc.), along with a statement explaining why the Designated Parties listed above do not adequately represent the person’s or organization’s interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under “Important Deadlines” below. All participants will be notified before the hearing whether the request for designated party status is granted.

**Primary Contacts****Advisory Team:**

Paula Rasmussen, Executive Officer  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
Phone: (760) 776-8981  
Email: [paula.rasmussen@waterboards.ca.gov](mailto:paula.rasmussen@waterboards.ca.gov)

Katharine Buddingh, Attorney III  
State Water Resources Control Board, Office of Chief Counsel  
Physical Address: 1001 I Street, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 440-7769  
Email: [katharine.buddingh@waterboards.ca.gov](mailto:katharine.buddingh@waterboards.ca.gov)

**Prosecution Team:**

Eric Taxer, Senior Water Resource Control Engineer  
Eastern California Regional Cannabis Unit  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150  
Phone: (530) 542-5434  
Email: [eric.taxer@waterboards.ca.gov](mailto:eric.taxer@waterboards.ca.gov)

Patrick Lewis, Attorney I  
State Water Resources Control Board, Office of Enforcement  
Physical Address: 801 K Street, 23<sup>rd</sup> Floor, Sacramento, CA 95814  
Mailing Address: P.O. Box 100, Sacramento, CA 95812  
Phone: (916) 327-0140  
Email: [patrick.lewis@waterboards.ca.gov](mailto:patrick.lewis@waterboards.ca.gov)

**Discharger:**

NCA Management Co, LLC  
29800 Agoura Road,  
Agoura Hills, CA 91301  
[TKaplan@vertcos.com](mailto:TKaplan@vertcos.com)

**Ex Parte Communications**

While this adjudicative proceeding is pending, the California Government Code forbids Designated Parties and Interested Persons from engaging in ex parte communications regarding this matter with Regional Water Board members and the Advisory Team, except during the public hearing itself. An ex parte communication is a written or verbal communication, either direct or indirect, that relates to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Regional Water Board member or a member of the Advisory Team that occurs in the absence of other parties and without notice and opportunity for all parties to participate in the communication (see Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Therefore, any written communication to Regional Water Board members or the Advisory Team before the hearing must also be copied to all other Designated Parties. Communications regarding non-controversial procedural matters, including a request for a continuance, are permissible ex parte communications and are not restricted.

The following communications to the Advisory Team must be copied to all Designated Parties: objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, arguments, or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

**Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined total of **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide opening and/or closing statements. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under “Important Deadlines” below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal or technical argument requires extra time, and why it could not have been provided in writing by the applicable deadline. Decisions will be based upon the

complexity and the number of issues under consideration, the extent to which the Designated Parties have coordinated and/or have similar interests, and the time available for the hearing.

A timer will be used but will not run during questions from the Regional Water Board and the Advisory Team or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence, Argument and Policy Statements**

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing, which must be received no later than the deadline listed under "Important Deadlines" below:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Regional Water Board members will not generally receive copies of materials incorporated by reference unless copies are provided by the Designated Party proffering the evidence as part of the Designated Party's evidentiary submission. Referenced materials are generally not posted on the Regional Water Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

**Prosecution Team:** The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies (which must include, at a minimum, all documents cited in the ACL Complaint or other material submitted by the Prosecution Team); and the witness information required under items 3-4 for all witnesses, including Regional Water Board staff. The Prosecution Team shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

**Designated Parties (including the Discharger):** All Designated Parties shall submit comments, arguments or analysis regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Water Board's Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Regional Water Board staff. Designated Parties shall submit this information so that it is received no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party who would like to submit evidence, legal or technical arguments, or policy statements to rebut information submitted by other Designated Parties, shall submit this rebuttal information so that it is received no later than the deadline listed under “Important Deadlines” below. “Rebuttal” means evidence, analysis, or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Final Hearing Package and Proposed Order: The Prosecution Team will submit the Final Hearing Package and a proposed Order so that it is submitted no later than the deadline listed under “Important Deadlines” below.

Copies: Regional Water Board members and the Advisory Team will receive copies of all submitted materials. If hard copies of the submitted materials are provided to the Regional Water Board members and the Advisory Team, the materials will be printed or copied double-sided in black and white on 8.5”x11” paper. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra ten paper copies for the Regional Water Board and the Advisory Team. For voluminous submissions, the Regional Water Board members and Advisory Team may receive copies in electronic format only. Designated Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Regional Water Board will not reject materials solely for failure to provide electronic copies.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under “Important Deadlines” below to be included in the Regional Water Board’s hearing package. Interested persons should be aware that this matter may settle without further notice, and therefore timely submittal by the deadline may be the only opportunity for an Interested Person to comment on the subject of the ACL Complaint. If the hearing proceeds as scheduled, the Regional Water Board will also receive oral comments from Interested Persons during the hearing. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board Chair may exclude evidence and testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will *not* be considered by the Regional Water Board and will *not* be included in the administrative record for this proceeding.

Presentations: PowerPoint and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing in electronic format, and hard copy if requested by the Advisory Team, so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct and shall be available for cross-examination by Designated Parties.

### **Administrative Record and Availability of Documents**

The ACL Complaint and evidentiary documents submitted in accordance with these Hearing Procedures shall be considered part of the official administrative record for this matter. Other submittals received for this proceeding will be added to the administrative record absent a contrary ruling by the Regional Water Board Chair. Written transcriptions of oral testimony or comments that are made at the hearing will be included in the administrative record.

Please note that staff of the Lahontan Water Board's Eastern California Regional Cannabis Unit maintain the public file for this matter. Arrangements to obtain electronic or hard copies of the documents in the public file may be made by contacting the Prosecution Team Primary Contact above.

### **Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

### **IMPORTANT DEADLINES**

All submissions must be received by 5:00 p.m. on the respective due date below.<sup>1,2</sup> Where both electronic and hard copy formats are required to be submitted to the Prosecution Team, a complete electronic copy must be received by 5:00 p.m. on the respective due date below, and a complete hard copy may follow via overnight delivery so that it is received by the Prosecution Team the next day.

June 5, 2020	<ul style="list-style-type: none"><li>▪ Prosecution Team issues ACL Complaint, Proposed Hearing Procedures and other related materials.</li></ul> <p><u>Hard Copies to: All other Designated Parties (by certified mail)</u></p> <p><u>Electronic or Hard Copies to:</u> All known Interested Persons, Advisory Team</p>
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<sup>1</sup> With the exception of the deadline to submit the Final Hearing Package and proposed Order.

<sup>2</sup> Where a deadline falls on a weekend or holiday, the deadline is extended to the next business day.



June 15, 2020	<ul style="list-style-type: none"> <li>▪ Objections due on Proposed Hearing Procedures.</li> <li>▪ Deadline to request “Designated Party” status.</li> </ul> <u>Electronic Copies to: All other Designated Parties, All known Interested Persons, Advisory Team, Prosecution Team</u>
June 22, 2020	<ul style="list-style-type: none"> <li>▪ Deadline to submit objections to requests for Designated Party status.</li> </ul> <u>Electronic or Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team, Prosecution Team</u>
July 6, 2020	<ul style="list-style-type: none"> <li>▪ Discharger’s deadline to submit <i>Hearing Waiver Form</i>.<sup>3</sup></li> </ul> <u>Electronic or Hard Copy to: Prosecution Team</u> <ul style="list-style-type: none"> <li>▪ Interested Persons’ written comments are due.</li> </ul> <u>Electronic or Hard copies to: All Designated Parties, Advisory Team</u>
July 8, 2020*	<ul style="list-style-type: none"> <li>▪ Advisory Team transmits decision on requests for designated party status.</li> <li>▪ Advisory Team transmits decision on objections to Proposed Hearing Procedures and/or confirms Final Hearing Procedures.</li> </ul> <u>Electronic or Hard Copies to: All Designated Parties, All known Interested Persons</u>
July 16, 2020*	<ul style="list-style-type: none"> <li>▪ Prosecution Team’s deadline for submission of information required under “Submission of Evidence, Argument and Policy Statements,” above.</li> </ul> <u>Electronic or Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team</u>
August 4, 2020*	<ul style="list-style-type: none"> <li>▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all information required under “Submission of Evidence, Argument, and Policy Statements” above. This includes all written comments regarding the ACL Complaint.</li> </ul> <u>Electronic or Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team, Prosecution Team</u>

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<sup>3</sup> Pursuant to California Water Code section 13323(b), persons subject to an ACL Complaint have the right to a hearing before the Regional Water Board within 90 days of receiving the ACL Complaint, but this right can be waived (to facilitate settlement discussions, for example). By submitting the waiver form, the Discharger is not waiving the right to a hearing; unless a settlement is reached, the Board will hold a hearing prior to imposing administrative civil liability. However, if the Board accepts the waiver, all deadlines marked with an “\*” will be revised if a settlement cannot be reached.

August 18, 2020*	<ul style="list-style-type: none"><li>▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal/ technical arguments and/or policy statements and all evidentiary objections.</li><li>▪ Deadline to request Prehearing Conference.</li></ul> <u>Electronic or Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team, Prosecution Team</u>
August 21, 2020*	<ul style="list-style-type: none"><li>▪ Deadline to submit requests for additional time at the hearing.</li></ul> <u>Electronic or Hard Copies to: All other Designated Parties, All known Interested Persons, Advisory Team</u>
August 24, 2020*	<ul style="list-style-type: none"><li>▪ Transmittal of Final Hearing Package and proposed Order.</li></ul> <u>Hard Copies to: Regional Water Board members</u> <u>Electronic or Hard Copies to: Advisory Team, Prosecution Team, All other Designated Parties</u>
August 27, 2020*	<ul style="list-style-type: none"><li>▪ Advisory Team transmits hearing time limits</li></ul> <u>Electronic or Hard Copies to: All Designated Parties, All known Interested Persons</u>
September 3, 2020*	<ul style="list-style-type: none"><li>▪ Hearing</li></ul>